

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 08-0953.01 Brita Darling

SENATE BILL 08-183

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SENATE SPONSORSHIP

Mitchell S.,

HOUSE SPONSORSHIP

Todd,

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**Senate Committees**  
State, Veterans & Military Affairs  
Appropriations

**House Committees**  
Judiciary

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A BILL FOR AN ACT

101 CONCERNING THE EFFECT OF DNA EVIDENCE OF NONPARENTAGE ON  
102 CHILD-RELATED ORDERS.

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Allows for an order determining parentage to be modified or set aside in certain situations based on DNA test results.

Requires the court to terminate child support obligations in certain situations if DNA test results establish that the obligor is not the child's biological parent.

Makes conforming amendments.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

HOUSE  
Am ended 2nd Reading  
April 30, 2008

SENATE  
3rd Reading Unamended  
April 16, 2008

SENATE  
Am ended 2nd Reading  
April 15, 2008

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 4 of title 19, Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **19-4-107.3. When determination of parentage is final -**  
5 **modifications - exceptions - repeal.** (1) (a) AN ORDER DETERMINING

6 PARENTAGE PURSUANT TO THIS ARTICLE SHALL BE MODIFIED OR SET ASIDE,  
7 WITHIN THE TIME FRAMES SPECIFIED IN SUBSECTION (2) OF THIS SECTION,  
8 IF GENETIC TEST RESULTS BASED ON DNA TESTING, ADMINISTERED IN  
9 ACCORDANCE WITH SECTION 13-25-126, C.R.S., ESTABLISH THE  
10 EXCLUSION OF THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AS  
11 THE BIOLOGICAL PARENT OF THE CHILD AND THE COURT DETERMINES THAT  
12 IT IS JUST AND PROPER UNDER THE CIRCUMSTANCES AND IN THE BEST  
13 INTERESTS OF THE CHILD.

14 (b) IF THE COURT MODIFIES OR SETS ASIDE AN ORDER DETERMINING  
15 PARENTAGE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THEN  
16 THE COURT SHALL MODIFY THE PROVISIONS OF THE ORDER RESPECTING  
17 CHILD SUPPORT FOR INSTALLMENTS ACCRUING SUBSEQUENT TO THE FILING  
18 OF THE MOTION PURSUANT TO SECTION 14-10-122 (6), C.R.S., AND MAY  
19 VACATE OR DEEM AS SATISFIED, IN WHOLE OR IN PART, UNPAID CHILD  
20 SUPPORT OBLIGATIONS ARISING FROM OR BASED ON THE ORDER  
21 DETERMINING PARENTAGE. THE COURT SHALL NOT ORDER RESTITUTION  
22 FROM THE STATE FOR ANY SUMS PAID TO OR COLLECTED BY THE STATE FOR  
23 THE BENEFIT OF THE CHILD.

24 (2) (a) A MOTION TO MODIFY OR SET ASIDE AN ORDER  
25 DETERMINING PARENTAGE PURSUANT TO THIS SECTION MUST BE FILED  
26 WITHIN TWO YEARS FROM THE DATE OF THE ENTRY OF THE ORDER.

1 (b) (I) FOR ORDERS ENTERED BEFORE AUGUST 15, 2008, A MOTION  
2 TO MODIFY OR SET ASIDE AN ORDER DETERMINING PARENTAGE PURSUANT  
3 TO THIS SECTION MUST BE FILED ON OR BEFORE AUGUST 15, 2010.

4 (II) THIS PARAGRAPH (b) IS REPEALED EFFECTIVE JULY 1, 2011.

5 (3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF  
6 THIS SECTION, NEITHER A DETERMINATION OF PARENTAGE NOR AN ORDER  
7 RESPECTING CHILD SUPPORT SHALL BE MODIFIED OR SET ASIDE PURSUANT  
8 TO THIS SECTION IF:

9 (a) THE INDIVIDUAL NAMED IN THE ORDER ACKNOWLEDGED  
10 PATERNITY PURSUANT TO SECTION 19-4-105 (1) (c) OR (1) (e) KNOWING  
11 THAT HE WAS NOT THE FATHER OF THE CHILD;

12 (b) THE CHILD WAS ADOPTED BY THE INDIVIDUAL NAMED IN THE  
13 ORDER; OR

14 (c) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED  
15 REPRODUCTION.

16 (4) A MOTION FILED PURSUANT TO THIS SECTION MAY BE BROUGHT  
17 BY THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AND SHALL BE  
18 SERVED IN THE MANNER SET FORTH IN THE COLORADO RULES OF CIVIL  
19 PROCEDURE UPON ALL OTHER PARTIES. THE COURT SHALL NOT MODIFY OR  
20 SET ASIDE A FINAL ORDER DETERMINING PARENTAGE PURSUANT TO THIS  
21 SECTION WITHOUT A HEARING.

22 (5) FOR PURPOSES OF THIS SECTION, "DNA" MEANS  
23 DEOXYRIBONUCLEIC ACID.

24 **SECTION 2.** 19-4-105 (2) (c), Colorado Revised Statutes, is  
25 amended to read:

26 **19-4-105. Presumption of paternity.** (2) (c) EXCEPT AS  
27 OTHERWISE PROVIDED IN SECTION 19-4-107.3, a legal finding of paternity

1 may be challenged in court only on the basis of fraud, duress, or mistake  
2 of material fact, with the burden of proof upon the challenger. Any legal  
3 responsibilities resulting from signing an acknowledgment of paternity,  
4 including child support obligations, shall continue during any challenge  
5 to the finding of paternity, except for good cause shown.

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 **SECTION 3.** 14-10-122, Colorado Revised Statutes, is amended  
10 BY THE ADDITION OF A NEW SUBSECTION to read:

11 **14-10-122. Modification and termination of provisions for**  
12 **maintenance, support, and property disposition - automatic lien -**

13 **repeal.** (6) (a) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS  
14 ARTICLE, WITHIN THE TIME FRAMES SET FORTH IN PARAGRAPH (c) OF THIS  
15 SUBSECTION (6), THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER  
16 MAY FILE A MOTION TO MODIFY OR TERMINATE AN ORDER FOR CHILD  
17 SUPPORT ENTERED PURSUANT TO THIS ARTICLE IF GENETIC TEST RESULTS  
18 BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION  
19 13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE INDIVIDUAL NAMED  
20 AS THE FATHER IN THE ORDER AS THE BIOLOGICAL PARENT OF THE CHILD  
21 FOR WHOSE BENEFIT THE CHILD SUPPORT ORDER WAS ENTERED.

22 (b) IF THE COURT FINDS PURSUANT TO PARAGRAPH (a) OF THIS  
23 SUBSECTION (6) THAT THE INDIVIDUAL NAMED AS THE FATHER IN THE  
24 ORDER IS NOT THE BIOLOGICAL PARENT OF THE CHILD FOR WHOSE BENEFIT  
25 THE CHILD SUPPORT ORDER WAS ENTERED AND THAT IT IS JUST AND  
26 PROPER UNDER THE CIRCUMSTANCES AND IN THE BEST INTERESTS OF THE  
27 CHILD, THE COURT SHALL MODIFY THE PROVISIONS OF THE ORDER FOR

1 SUPPORT WITH RESPECT TO THAT CHILD BY TERMINATING THE CHILD  
2 SUPPORT OBLIGATION AS TO INSTALLMENTS ACCRUING SUBSEQUENT TO  
3 THE FILING OF THE MOTION FOR MODIFICATION OR TERMINATION, AND THE  
4 COURT MAY VACATE OR DEEM AS SATISFIED, IN WHOLE OR IN PART,  
5 UNPAID CHILD SUPPORT OBLIGATIONS ARISING FROM OR BASED UPON THE  
6 ORDER DETERMINING PARENTAGE. THE COURT SHALL NOT ORDER  
7 RESTITUTION FROM THE STATE FOR ANY SUMS PAID TO OR COLLECTED BY  
8 THE STATE FOR THE BENEFIT OF THE CHILD.

9 (c) (I) A MOTION TO MODIFY OR TERMINATE AN ORDER FOR CHILD  
10 SUPPORT PURSUANT TO THIS SUBSECTION (6) MUST BE FILED WITHIN TWO  
11 YEARS FROM THE DATE OF THE ENTRY OF THE INITIAL ORDER  
12 ESTABLISHING THE CHILD SUPPORT OBLIGATION.

13 (II) (A) FOR ORDERS ENTERED BEFORE AUGUST 15, 2008, A  
14 MOTION TO MODIFY OR TERMINATE AN ORDER ESTABLISHING CHILD  
15 SUPPORT PURSUANT TO THIS SUBSECTION (6) MUST BE FILED ON OR BEFORE  
16 AUGUST 15, 2010.

17 (B) THIS SUBPARAGRAPH (II) IS REPEALED EFFECTIVE JULY 1,  
18 2011.

19 (d) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND  
20 (b) OF THIS SUBSECTION (6), A COURT ORDER FOR CHILD SUPPORT SHALL  
21 NOT BE MODIFIED OR TERMINATED PURSUANT TO THIS SUBSECTION (6) IF:

22 (I) THE CHILD SUPPORT OBLIGOR ACKNOWLEDGED PATERNITY  
23 PURSUANT TO SECTION 19-4-105 (1) (c) OR (1) (e), C.R.S., KNOWING THAT  
24 HE WAS NOT THE FATHER OF THE CHILD;

25 (II) THE CHILD WAS ADOPTED BY THE CHILD SUPPORT OBLIGOR; OR

26 (III) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED  
27 REPRODUCTION.

1 (e) A MOTION FILED PURSUANT TO THIS SECTION MAY BE BROUGHT  
2 BY THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AND SHALL BE  
3 SERVED IN THE MANNER SET FORTH IN THE COLORADO RULES OF CIVIL  
4 PROCEDURE UPON ALL OTHER PARTIES. THE COURT SHALL NOT MODIFY OR  
5 SET ASIDE A FINAL ORDER DETERMINING PARENTAGE PURSUANT TO THIS  
6 SECTION WITHOUT A HEARING.

7 (f) FOR PURPOSES OF THIS SUBSECTION (6), "DNA" MEANS  
8 DEOXYRIBONUCLEIC ACID.

9 **SECTION 4.** 13-25-126 (1) (a), Colorado Revised Statutes, is  
10 amended to read:

11 **13-25-126. Genetic tests to determine parentage.** (1) (a) In any  
12 action, suit, or proceeding in which the parentage of ~~any~~ A child is at  
13 issue, INCLUDING BUT NOT LIMITED TO ACTIONS OR PROCEEDINGS  
14 PURSUANT TO SECTION 14-10-122 (6) OR 19-4-107.3, C.R.S., upon motion  
15 of the court or any of the interested parties, the court shall order the  
16 alleged mother, the child or children, and the alleged father to submit to  
17 genetic testing and other appropriate testing of inherited characteristics,  
18 including but not limited to blood and tissue type, for the purpose of  
19 determining probability of parentage. If ~~any~~ A party refuses to submit to  
20 these tests, the court may resolve the question of parentage against ~~such~~  
21 THE party to enforce its order if the rights of others and the interests of  
22 justice so require.

23 [REDACTED]

24 [REDACTED]

25 **SECTION 5.** 13-32-101, Colorado Revised Statutes, is amended  
26 BY THE ADDITION OF A NEW SUBSECTION to read:

27 **13-32-101. Docket fees in civil actions - judicial stabilization**

1 **cash fund - support registry fund created.** (8) AT THE TIME OF FILING  
2 A MOTION PURSUANT TO SECTION 19-4-107.3 OR 14-10-122 (6), C.R.S.,  
3 SEEKING TO SET ASIDE A FINAL OR PERMANENT ORDER CONCERNING  
4 PARENTAGE BASED UPON DNA EVIDENCE ESTABLISHING THE EXCLUSION  
5 OF THE PETITIONER AS THE BIOLOGICAL FATHER OF A CHILD, OR TO  
6 TERMINATE AN ORDER REQUIRING THE PETITIONER TO PAY CHILD SUPPORT  
7 FOR THAT CHILD, THE PETITIONER SHALL PAY A FEE OF SEVENTY DOLLARS.  
8 THE FEE COLLECTED PURSUANT TO THIS SUBSECTION (8) SHALL BE  
9 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE JUDICIAL  
10 STABILIZATION CASH FUND CREATED IN SUBSECTION (1.5) OF THIS  
11 SECTION.

12 **SECTION 6. Effective date.** (1) This act shall take effect  
13 August 15, 2008.

14 (2) However, if a referendum petition is filed against this act or  
15 an item, section, or part of this act during the 90-day period after final  
16 adjournment of the general assembly that is allowed for submitting a  
17 referendum petition pursuant to article V, section 1 (3) of the state  
18 constitution, then the act, item, section, or part, shall not take effect unless  
19 approved by the people at a biennial regular general election and shall  
20 take effect on the date specified in subsection (1) or on the date of the  
21 official declaration of the vote thereon by proclamation of the governor,  
22 whichever is later.